

**MINUTES**  
**LAKE COUNTY ZONING BOARD**  
**August 3, 2011**

The Lake County Zoning Board met on Wednesday, August 3, 2011 in the Commission Chambers on the second floor of the County Administration Building to consider petitions for Rezoning and Conditional Use Permits.

The recommendations of the Lake County Zoning Board will be transmitted to the Board of County Commissioners for their public hearing to be held on Tuesday, August 23, 2011 at 9 a.m. in the Commission Chambers on the second floor of the County Administration Building, Tavares, Florida.

**Members Present:**

Timothy Morris, Vice Chairman	District 1
Rick Gonzalez	District 4
Paul Bryan, Chairman	District 5
Jim Miller	School Board Representative
Kasey Kesselring	At-Large Representative

**Members Not Present:**

John Childers	Ex-Officio, Nonvoting Military Representative
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**Staff Present:**

Brian T. Sheahan, AICP, Director, Planning and Community Design Division  
Steve Greene, AICP, Chief Planner, Planning and Community Design Division  
Rick Hartenstein, AICP, Senior Planner, Planning and Community Design Division  
Melving Isaac-Jimenez, Planner, Planning and Community Design Division  
Aziza Bryson, Public Hearing Coordinator, Planning and Community Design Division  
Ann Corson, Office Associate IV, Planning and Community Design Division  
Melanie Marsh, Deputy County Attorney  
Sarah Taitt, Assistant County Attorney

Chairman Bryan called the meeting to order at 9:01 a.m. He led in the Pledge of Allegiance and Tim Morris gave the invocation. Chairman Bryan noted that a quorum was present. He confirmed the Proof of Publication for each case as shown on the monitor and that this meeting had been noticed pursuant to the Sunshine Statute.

Chairman Bryan explained the procedure for hearing cases on the consent and regular agendas. He stated that all exhibits presented at this meeting by staff, owners, applicants, and those in support or opposition must be submitted to the Public Hearing Coordinator prior to proceeding to the next case. He added that this Board is a recommending board only, and the Board of County Commissioners will be hearing these cases later this month when a final determination will be made.

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**OTHER BUSINESS:**

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**Adjournment**

**OPENING DISCUSSION**

Chairman Bryan stated that consent agenda item #1, PH#13-11-3, Olmstead Rezoning, was being placed on the regular agenda due to a speaker request card.

Brian T. Sheahan, Director, noted that regular agenda item #2, CUP #10/4/2-2, Dr. Chon Springwater Project, would be a two-part consideration; he indicated that part one would be the question of *Res Judicata* and part two would be the presentation of the actual case if a finding by the Zoning Board determined that *Res Judicata* did not apply to the case.

**MINUTES**

**MOTION** by Tim Morris, **SECONDED** by Kasey Kesselring to **APPROVE** the May 4, 2011 Lake County Zoning Board Public Hearing minutes, as submitted.

**FOR:** Kesselring, Morris, Miller, Bryan, Gonzalez

**ABSENT:** None

**AGAINST:** None

**NOT PRESENT:** Childers

**MOTION CARRIED: 5-0**

**MOTION** by Kasey Kesselring, **SECONDED** by Rick Gonzalez to **APPROVE** the June 1, 2011 Lake County Zoning Board Public Hearing minutes, as submitted.

**FOR:** Kesselring, Morris, Miller, Bryan, Gonzalez

**ABSENT:** None

**AGAINST:** None

**NOT PRESENT:** Childers

**MOTION CARRIED: 5-0**



REGULAR AGENDA

CASE NO: PH# 13-11-3 AGENDA NO. 1

OWNER: Peggy E. Reithel  
APPLICANT: Kenneth Olmstead  
PROJECT NAME: Olmstead Rezoning

Melanie Marsh, Deputy County Attorney was present for Staff.

Sarah Taitt, Assistant County Attorney was present for the Zoning Board.

Steve Greene, Chief Planner, presented the case. He stated that the applicant would like to rezone the property from Mixed Home Residential (RM) to Agriculture (A) for the purpose of constructing a plant nursery with greenhouse. He also added that the proposed rezoning is consistent with the existing and surrounding uses in the area. Based on staff's analysis and findings of fact, Mr. Greene stated that staff is recommending approval of the request.

Chuck Hiott, Booth, Ern, Straughan & Hiott, Inc., the Applicant's representative, explained that the owner, Ms. Reithel, had always been under the impression that her current zoning district was zoned Agriculture (A). Based on the assumption that the property was zoned Agriculture (A), Mr. Olmstead, the applicant, who is in the process of buying the property from Ms. Reithel, is running a hydroponic produce nursery. Mr. Hiott explained that after Mr. Olmstead found out that he was not in compliance after learning that the property is not zoned Agriculture (A), he decided to take the necessary steps to rezone the property in order to be in compliance with the current zoning.

Dawn Cucinotta, neighbor, spoke in opposition to the request. Showing pictures on the monitor (OPPOSITION EXHIBITS A – F), Ms. Cucinotta addressed several issues. Her first concern was in regards to the close proximity in which Mr. Olmstead has constructed his first greenhouse to their well. Her second concern was in regards to Mr. Olmstead's horses grazing the grass on her property while also destroying their fence. She stated that due to Mr. Olmstead's horses grazing his land barren, she is now concerned with all of the dirt, sand, pesticides, and possible fertilizers that will all be draining down towards her well in the event of any heavy rains. Her third concern was related to a decrease in her property value as a result of the view of Mr. Olmstead's greenhouse from her front door. Displaying photos (OPPOSITION EXHIBIT E & F), her fourth concern was in regards to safety issues due to all of the debris and litter located on the property. Ms. Cucinotta mentioned that with storms and possible cyclonic winds, she is concerned with all of the debris flying around creating potential safety hazards and all of the debris leaving a mess along her fence line. She also mentioned that Mr. Olmstead has had several problems with code enforcement.

Mr. Hiott reiterated that they would like the zoning to be consistent with the future land use map. Rick Gonzalez, Board member, asked about setback requirements. Setback requirements were discussed.

Melanie Marsh, Deputy County Attorney, speaking of behalf of staff, reminded and cautioned the Board that code enforcement violations cannot be taken into consideration when making a decision on a zoning case that comes before the Board.

Chairman Bryan asked staff whether or not a Conditional Use Permit (CUP) could be done. Mr.

Greene explained why a CUP would be inconsistent with the Land Development Regulations (LDRs). He suggested that the applicant meet with the surrounding property owners and possibly come up with a new development plan in order to arrest some of those impacts that are of concern to the neighbors.

There was some Board discussion as to the condition of the subject property based on the photographs provided by the neighbor. Mr. Hiott reminded the Board that this is a zoning issue not a code enforcement case and urged the Board to approve the request.

Discussion between the Board and staff took place in regards to if the property were rezoned, if the structure would meet setback requirements or have conformity issues.

Jim Miller, Board member, stated that should the Board deny the request, he does not mind if the case is appealed.

**MOTION by Kasey Kesselring, SECONDED by Rick Gonzalez to recommend DENIAL of PH #13-11-3, the request to rezone the property from Mixed Home Residential (RM) to Agriculture (A) for the purpose of constructing a plant nursery with greenhouse.**

**FOR: Kesselring, Gonzalez, Bryan, Miller, Morris**

**ABSENT: None**

**AGAINST: None**

**NOT PRESENT: Childers**

**MOTION CARRIED: 5-0**

Mr. Sheahan asked the Board to specify a reason for denial of the request for the record. Chairman Bryan stated that his reason for denial was because there are not other agricultural endeavors in this neighborhood and he felt that this request would be an intrusion to surrounding property owners.



CASE NO: CUP #10/4/2-2 AGENDA NO. 2

OWNER: Hang Ju and Yuon Sup Chon  
APPLICANT: Hang Ju and Yuon Sup Chon  
PROJECT NAME: Dr. Chon Springwater Project

Melanie Marsh, Deputy County Attorney was present for Staff.

Sarah Taitt, Assistant County Attorney was present for the Zoning Board.

Chairman Bryan clarified that this could be a two-part case. He stated that if the Board felt that the case met *Res Judicata*, he presumed that the Zoning Board would not hear the case and if the Board determined the case did not meet *Res Judicata* then part two of the case presentation would be heard.

Rick Hartenstein, Senior Planner, limited this portion of his presentation of the case to the question of *Res Judicata*. He stated that the applicant would like to request a Conditional Use Permit (CUP) within the Agriculture (A) Zoning District to permit the extraction of water (up to 100,000 gpd average) from an existing four (4) inch well; the water is to be transported off-site to a bottled-water processing facility. He stated that the Board would need to decide if *Res Judicata* applies to this case. He also informed the Board that the applicant has applied for this request five times since 1995. Based on staff's analysis and all of the information provided, staff is recommending that the case should not be heard based on the doctrine of *Res Judicata*.

Chairman Bryan asked Mr. Hartenstein to briefly explain *Res Judicata*. Mr. Hartenstein explained that the doctrine of *Res Judicata* allows a governing body to decide not to hear a case if there are no substantial changes to the application; it is in place to protect the final judgment of any previous cases.

Anthony J. Cotter, Gray-Robinson Attorneys At Law, the Applicant's representative, stated that the doctrine of *Res Judicata* is generally held in civil court regarding civil matters. He indicated that the doctrine does not fit as efficiently when it comes to administrative proceedings and referenced another type of *Res Judicata* called *Administrative Res Judicata* or Administrative Finality, which he stated is what the code is really mentioning. Mr. Cotter pointed out that the Lake County Code refers to a change in circumstances but that the code does not define what would constitute as a substantial change in circumstances. He also mentioned that the Supreme Court cautions local governments from applying *Res Judicata* because of the affect it may have on the rights of the citizens and cited the case of Thompson v. The Department of Environmental Regulations. Mr. Cotter acknowledged that the Chon's have applied for this application five separate times; yet also noted that only three of the five requests resulted in final decisions. He stated that with this application, there have been some changes. One of those changes is that the Chon's are requesting more water than in their previous applications. Another change he mentioned is that what was once a non-permitted use by the Water Management District is now permitted and the Chon's have been given a permit to withdraw 100,000 gallons per day by the Water Management District. He also mentioned that since the prior applications, another water bottling company in Lake County, Niagara, has been allowed to withdraw water from essentially the same source. Based on all of these changes, Mr. Cotter stated that the case should be heard.

Mr. Gonzalez asked if the permit from the Water Management District states what the water must be used for. Mr. Cotter answered that the Chon's can obtain a general permit to extract water

with certain restrictions in regards to irrigation.

Ms. Marsh, speaking on behalf of staff, briefly addressed that Niagra Bottling was never a zoning issue as the plant is permitted where it is located. She also stated that as far as *Res Judicata* from a zoning and staff perspective this is a request for the same use on the same piece of property.

Mr. Gonzalez stated that the case should be heard because he does not feel that this case meets *Res Judicata*. Chairman Bryan stated that he has heard this case several times and he does not believe that there are any substantial changes to the request. Tim Morris, Board member, agreed with Chairman Bryan.

**MOTION by Tim Morris, SECONDED by Kasey Kesselring to NOT hear the case of Dr. Chon Springwater, CUP# 10/4/2-2, based on the doctrine of *Res Judicata*.**

Before the vote was taken, Chairman Bryan noted that there was a speaker request card regarding the case and asked the speaker if she would like to speak to the doctrine of *Res Judicata*.

Sharon Torres, concerned citizen, stated that there was no change to the request except for the amount of gallons of water to be extracted.

**FOR: Morris, Kesselring, Bryan, Miller**

**ABSENT: None**

**AGAINST: Gonzalez**

**NOT PRESENT: Childers**

**MOTION CARRIED: 4-1**



**CASE NO:** PH #11-11-2 **AGENDA NO.** 3

**OWNER:** BFG Lakeshore LTD/Jeffrey B. Fuqua  
**APPLICANT:** BFG Lakeshore LTD/James H. Fant  
**PROJECT NAME:** Hartle Grove Planned Unit Development (PUD) Amendment

Rick Hartenstein, Senior Planner, presented the case. He stated that the applicant would like to amend Ordinance #2009-4 to allow a mixed use development consisting of single-family residential, town homes, multi-family residential, and commercial uses on approximately 69 acres which increases the number of dwelling units from 325 dwellings (5 du/ac) to 483 dwellings (7 du/ac). He showed a map of the property (STAFF EXHIBIT A) and pointed out that the property is located in the Clermont area. He stated that currently the PUD has a utility service agreement with the City of Clermont. Showing email correspondence (STAFF EXHIBIT B), he stated that the utility service agreement would need to be upgraded. Showing correspondence from Lake County Schools (STAFF EXHIBIT C), Mr. Hartenstein stated that the PUD is vested for school concurrency for the 325 single family units that were in the original PUD and noted that any increase will be required to meet school concurrency. Showing correspondence from the City of Clermont (STAFF EXHIBIT D & E), Mr. Hartenstein mentioned that the applicant is in the process of amending their Utility Services Agreement, but that Clermont city staff is waiting to present the amendment to City Council pending the outcome of the current rezoning case. Based on staff's analysis and findings of fact, Mr. Hartenstein stated that staff is recommending approval of the request.

Donald J. Curotto, Shutts & Bowen, LLP, the Applicant's representative, spoke in regards to their plans and gave some updates on the project.

Mr. Morris asked if the alignment of Hartle Road was negotiated with the County. Mr. Curotto answered that the alignment of Hartle Road with State Road 50 was negotiated with the County and spoke in regards to the construction and dedication of New Hartle Road and the dedication of Old Hartle Road.

**MOTION** by Tim Morris, **SECONDED** by Kasey Kesselring to recommend **APPROVAL** of PH #11-11-2, the request to amend Ordinance #2009-4 to allow a mixed use development consisting of single-family residential, town homes, multi-family residential, and commercial uses on approximately 69 acres which increases the number of dwelling units from 325 dwellings (5 du/ac) to 483 dwellings (7 du/ac).

**FOR:** Kesselring, Gonzalez, Bryan, Miller, Morris

**ABSENT:** None

**AGAINST:** None

**NOT PRESENT:** Childers

**MOTION CARRIED:** 5-0



**CASE NO:** CUP #11/3/1-3**AGENDA NO.** 4

**OWNER:** Susan & Robert Denis  
**APPLICANT:** Kenneth R. "Ted" Wicks  
**PROJECT NAME:** Stanley Pond Farm

Melving Isaac, Planner, presented the case. He stated that the applicant would like to request a Conditional Use Permit (CUP) in the Agriculture (A) Zoning District to allow agri-tourism functions including horticulture, aquaculture, animal husbandry, recreational activities, educational tours, training, and meetings. Mr. Isaac mentioned one correction to the ordinance which he informed the Board was located on page 2 of section 2, B-4, and was in regards to noise. Based on staff's analysis and findings of fact, Mr. Isaac stated that staff is recommending approval of the request.

Mr. Gonzalez asked about the change to the ordinance. Mr. Isaac stated that the words "or used" will be removed and the condition will read as follows: "Public Address Systems or similar amplification devices shall not be installed".

Ted Wicks, the Applicant, stated that over the years they have struggled with finding ways to increase the attention to their agricultural production facilities. He spoke of agri-tourism and mentioned the business plan that the Denis' have come up with. He stated that with a CUP in place, the Denis' will be able to run a successful business that will benefit agriculture in Lake County.

**MOTION by Kasey Kesselring, SECONDED by Rick Gonzalez to recommend APPROVAL of CUP #11/3/1-3, as amended, requesting a Conditional Use Permit in the Agriculture (A) Zoning District to allow agri-tourism functions including horticulture, aquaculture, animal husbandry, recreational activities, educational tours, training, and meetings.**

**FOR:** Kesselring, Gonzalez, Bryan, Miller, Morris

**ABSENT:** None

**AGAINST:** None

**NOT PRESENT:** Childers

**MOTION CARRIED: 5-0**

CASE NO: PH #11-09-2 AGENDA NO. 5

OWNER: Eagles Landing at Ocoee, LLC  
APPLICANT: Eagles Landing at Ocoee, LLC, Rohland "Randy" June  
PROJECT NAME: Lake Apopka Sound PUD rezoning amendment

Steve Greene, Chief Planner, presented the case. He stated that the applicant would like to amend PUD Ordinance #2005-89 to remove the age restriction condition and to reduce the number of dwelling units from 119 to 102. Showing a map of the property (STAFF EXHIBIT F), he pointed out that most of the development is in Lake County; however, he showed that the far eastern portion of the property straddles the Orange County line. He also mentioned that as part of the development process, a construction plan was submitted but was held up by Orange County pending approval of certain access issues. Since that time, Mr. Greene referenced a Memorandum of Understanding (MOU) that was established and approved in order to address access and other infrastructural public facility issues. He also added that the proposed rezoning is consistent with the existing and surrounding uses in the area. Based on staff's analysis and findings of fact, Mr. Greene stated that staff is recommending approval of the request.

Randy June, the Applicant, agreed with staff recommendations and stated his availability for questions.

John Starkovich, concerned citizen, showed a road map on the monitor (OPPOSITION EXHIBIT G) and voiced his concerns in regards to the traffic issue. He was concerned that a traffic study done at this point would not accurately reflect the true traffic impacts because of all the construction taking place in the area currently. He also asked about the future land use category being changed from rural transition to urban low density. Mr. Sheahan explained how the property was changed to urban low density.

Mr. Miller asked questions in regards to transporting children to an Orange County school versus a Lake County school. Dawn McDonald, Senior Planner, Lake County Schools, spoke about a letter from Lake County that was required by Orange County stating that Lake County will be responsible for the children that will be serviced.

**MOTION by Kasey Kesselring, SECONDED by Tim Morris to recommend APPROVAL of PH #11-09-2, to amend PUD Ordinance #2005-89 to remove the age restriction condition and to reduce the number of dwelling units from 119 to 102.**

**FOR:** Kesselring, Gonzalez, Bryan, Miller, Morris

**ABSENT:** None

**AGAINST:** None

**NOT PRESENT:** Childers

**MOTION CARRIED: 5-0**

**OTHER BUSINESS:**

Mr. Sheahan had several announcements. He informed the Board that on August 16, 2011, the Board of County Commissioners (BCC) was scheduled to consider some appointments to the Zoning Board. He also notified the Board to look for a new and updated agenda in their future booklets. Lastly, Mr. Sheahan advised the Board to start reviewing the new 2030 Comprehensive Plan as this plan will likely become effective in the near future. He mentioned an upcoming workshop in November with the Board of County Commissioners that will discuss the adoption of new Land Development Regulations as required by the plan.

Chairman Bryan questioned the need to appoint a Zoning Board Secretary and stated that there really is not a need for the position.

**MOTION by Tim Morris, SECONDED by Kasey Kesselring to recommend the ELIMINATION of the secretary position for the Zoning Board.**

**FOR:** Kesselring, Gonzalez, Bryan, Miller, Morris

**ABSENT:** None

**AGAINST:** None

**NOT PRESENT:** Childers


**MOTION CARRIED: 5-0**

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:39 a.m.

Respectfully submitted,

  
Aziza Bryson  
Public Hearing Coordinator

  
Paul Bryan  
Chairman